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May 22, 2015

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**By ECF**

The Honorable Lewis A. Kaplan  
United States District Judge  
United States Courthouse  
500 Pearl Street  
New York, NY 10007

Re: *Cline, et al. v. TouchTunes Music Corporation*, No. 14 Civ. 4744 (LAK)

Dear Judge Kaplan:

We write on behalf of Defendant TouchTunes Music Corporation to request denial of Plaintiffs' May 22, 2015 letter motion seeking to strike a portion of TouchTunes' May 21, 2015 supplemental brief.

On May 6, 2015, this Court ordered simultaneous, supplemental briefing on a series of questions relating to the application of TouchTunes' Terms of Use. The parties exchanged such supplemental briefing on May 21, 2015, as so ordered. One of TouchTunes' responses to the Court's questions was to argue that the questions need not be addressed, because this Court could dismiss Plaintiffs' claims regardless of the Terms of Use.

Today, Plaintiffs filed a letter motion claiming – incorrectly – that TouchTunes “disregarded the Order by including a significant portion of impermissible surreply on its underlying Motion to Dismiss.” Plaintiffs find no support in the Court's May 6, 2015 Order, nor in any Federal, local, or individual rule to support this contention.

Plaintiffs may, of course, disagree with TouchTunes' responses to the Court's questions, but TouchTunes did not in any way violate the Order. Furthermore, the arguments in Section V of TouchTunes' supplemental brief are not new; TouchTunes previously briefed every one of these arguments in its two motions to dismiss. And Plaintiffs responded to these arguments over the course of two complaints and two briefs in opposition. Plaintiffs clearly are not prejudiced by the lack of response to the supplemental brief. Presumably, given the extensive briefing to date, the Court did not want extensive back-and-forth briefing on its discrete questions, and thus the neither party was granted a response.

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Accordingly, TouchTunes respectfully requests that the Court disregard Plaintiffs' motion to strike a portion of TouchTunes' May 21, 2015 supplemental brief.

Respectfully Submitted,

/s/ Jamie A. Levitt  
Jamie A. Levitt  
*Attorney for Defendant*  
*TouchTunes Music Corporation*

cc: Jeffrey M. Norton, Esq. (*via ECF*)